

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5803 of 2013

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Rajiv Ranjan Paswan S/o Sri Madhusudan Paswan, R/o Village- Azad Nagar, P.S. and P.O.- Bachhwara, District- Begusarai.

.... Petitioner/s

Versus

1. Bihar State Power (Holding) Company Ltd., Patna, through its Chairman-cum-Director, Vidyut Bhawan, Bailey Road, Patna
2. Joint Secretary, Bihar State Power (Holding) Company Ltd., Patna
3. Himanshu Shekhar S/o Late Sri Krishna Shaw at present working as Assistant Electrical Engineer, General Cadre and posted at Siwan Rural Electrification, Siwan.

.... Respondent/s

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Appearance :

For the Petitioner/s : M/s R.N. Mukhopadhaya and Md. Nazir Ansari, Advs.

For the Respondent no. 3 : M/s Sanjeet Kumar and Raj Kumar, Advs.

For the Respondents Mr. Anand Kumar Ojha, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 15-03-2016

Heard learned counsel for the petitioner, private respondent and the Bihar State Power (Holding) Company Limited.

In this case, prayer has been made for quashing the offer of appointment dated 10th October 2012 with respect to Himanshu Shekhar (Respondent no. 3) for the post of A.E.E. (General & G.T.O.) at serial No. 10, Roll No. 1120115 and consequential letter of appointment of Respondent no. 3 who has wrongly been given the benefit of reservation of the scheduled caste (SC) category and further prayer has been made that the petitioner should be appointed as Assistant Electrical Engineer,

General Cadre on the basis of select list dated 17.09.2012.

Basically, in the present case matrix of litigation is in very small area, as both the parties have very strongly laid claim to the said post on the ground of being member of schedule caste, basic objection of petitioner is, Respondent No. 3, cannot be allowed to lay claim of reservation on the basis of caste certificate issued by State of Uttar Pradesh and Bihar simultaneously.

As per the claim of the petitioner, Respondent no. 3 cannot be accommodated to the post of A.E.E. (General & G.T.O.) on the ground of being in SC category, as admittedly he has obtained the caste certificate from the State of Uttar Pradesh there he has claimed to be belonging to the caste of Pasi and on that strength, he has obtained the service in B.E.M.L., Orissa. At the same time, he has obtained the caste certificate from the State of Bihar claiming to be belonging to the caste of Pasi, here also he has obtained the selection on the ground of being a person of SC category. The primary grievance has been raised by the petitioner that Respondent no. 3 has not been residing in the State of Bihar, cannot take benefit under Bihar Reservation of Vacancies in Post and Services (For Schedule Caste, Schedule Tribe and Other Backward Classes Act 1991 (herein after mentioned as “Reservation Act”). As per the English version Reservation Act,



the person, who is residing in the State of Bihar, will be entitled to the benefit of the reservation only, not the person who is living outside the State. Second grievance has been raised that on the basis of the caste certificate of Uttar Pradesh, Respondent no. 3 had worked in the State of Orissa for the period from 12.10.2009 to 12.10.2012 and there he has not exercised the option of using the caste certificate issued by the State of Bihar, he has raised objection, even if a person has two caste certificates from two States, he cannot use both the certificates simultaneously. In the present case, Respondent no. 3 has used both caste certificates simultaneously one by one, first for getting the appointment in B.E.M.L., Orissa and while working there, he applied against the vacancies issued by the Bihar State Electricity Board for the post of Assistant Electrical Engineer and was selected on the aforesaid post and as such, Respondent no. 3 should be terminated from his service and in his place, the petitioner should be appointed.

From the record it appears that Respondent no. 3 has born on 9.6.1987, took admission in the Sainik School, Nainital in 1998, obtained the caste certificate of scheduled castes on 23.02.2001 showing himself to be Pasi. He passed the Matric examination in 2002 from Sainik School. Later on, he came back to the State of Bihar where he obtained the degree of Intermediate. He



prosecuted his study in Intermediate during the academic session 2002-2004 and later on, the petitioner joined preparatory course in I.T. B.H.U., Varanasi (UP) on 10.06.2004. Thereafter, he succeeded in getting admission in B.Tech Course in BHU during the period 2005-2009. On 13.09.2010, Respondent no. 3 had applied for the caste certificate in the State of Bihar and the District Magistrate, Patna, had issued him the caste certificate on 20.10.2010. Some facts are undisputed that Respondent no. 3 has two caste certificates and he is exercising both the castes certificates at the same time one by one. The petitioner has not disputed that either the caste certificate granted by the State of Bihar, has been cancelled, or the caste certificate granted by the Uttar Pradesh, has been cancelled.

The counsel for the Respondent no. 3 has submitted that he has obtained the caste certificate in terms of the Bihar Reservation Act, 1991. The Hindi text of Bihar Reservation Act provides that a person who is outsider, will not be entitled to the reservation and he further submits that the Bihar Reservation Act 1991, in English, is not proper translation as Reservation Bill 1991 in terms of the Bihar Official Language Act, 1950, the Act and Rules would be introduced in Hindi version and Reservation Act has been framed in Hindi and same has been translated into



English. If there is a dispute between Hindi and English text, Hindi will prevail over English and for that he has placed reliance on three judgments reported in **1987 PLJR 482 paras 5 and 6**, (Shyamlal Sah vs. State of Bihar) **1992 (1) PLJR 760 paras 8 and 13** (Chandra Nath vs. Janak Kishore Devi) and **2009 (2) PLJR 265 paras 4, 5 and 9** (Khicri Ram vs. State of Bihar), primarily issue has been raised by the petitioner that the word that has been used in the Bihar Reservation Act, 1991 (English version) which uses the words “provided that further” candidates residing out of the State of Bihar, shall not claim for benefit of reservation under the Act. It is proper to quote relevant portion of English and Hindi version just opposition to understand difference in Hindi and English version.

“परन्तु और कि बिहार राज्य के बाहर के निवासी अभ्यर्थी इस अधिनियम के अधीन आरक्षण के लाभ हेतु दावा नहीं करेंगे।”

English version “provided further that the candidates residing out of the State of Bihar shall not claim for benefit of reservation Act”

In view of authoritative pronouncement of this Court, Hindi Text will prevail over English. Hindi version stipulates any person, who is outsider, will not be entitled to the benefit of reservation whereas English Text provides that the candidate residing outside the State will not be entitled to reservation. In



Hindi version of Text “बाहर के निवासी” is in noun form whereas “residing outside” is verb form. There is subtle difference but has major impact as, Hindi text said “those who are outsider” but English Text said who resides outside the State. In term of Hindi Text a person originally from State of Uttar Pradesh will not be entitled to benefit but a person who is resident of Bihar will not be excluded from taking benefit because he is residing in Uttar Pradesh. There is no dispute that originally Respondent no. 3 is resident of the State of Bihar and the State of Bihar has granted him caste certificate, there is no bar/rule that Respondent no. 3 cannot exercise the option of reservation when the caste certificate that was granted, has not been cancelled as on today.

Every State has framed its own rule and regulation With regard to reservation policy, the State of Bihar has granted the caste certificate in terms of its Reservation Rule 1991 whereas the State of Uttar Pradesh has found that Respondent no. 3 is by caste of “Pasi” has granted the caste certificate. The word residing is in the English version, but in the Hindi version the word is Niwasi there, is vast difference between Niwasi and residing, it denotes and connotes as per English Text that a person at the time of application was residing outside is excluded, but the Niwasi connotes and suggests that a person may be residing outside, is specifically



resident of Bihar, will be entitled to the benefit in terms of 1991 Act, it can be taken into consideration in peculiar situation by way of example if a person is a resident of State of Bihar and for certain period he has gone outside prosecuting his study, got employment in the other State either in the private sector or public sector or in a government sector, has living connection with the native place, coming regularly and visiting the place there, cannot be said that he is not Niwasi of the State of Bihar merely because he is residing for his own professional work or for the purpose of bread earning he was compelled to go outside. The State of Bihar will not disqualify the person for the benefit arising from Bihar Reservation Act, 1991.

The petitioner has not challenged that Respondent no.3 is not belonging to the SC category. Had there been a challenge, the Court could have considered the same in different manner. If there is no challenge from the side of the petitioner that he is not a man belonging to the SC category merely his challenge is confined to the point that simultaneously, he cannot use caste certificates issued by the State Government simultaneously, is not sustainable as Reservation Rule 1991 does not prohibit such use, so much so, there is no provision prohibiting the person to obtain caste certificate from two States.

In view of aforesaid discussion, it will not be prudent to interfere with selection of Respondent no. 3 after a long lapse of time and so much so that the Bihar State Power (Holding) Company before the appointment, has made an enquiry and found that Respondent no. 3 belongs to the SC category and accordingly he was granted the benefit of reservation.

In such view of the matter, this Court does not find any merit in the present petition. Accordingly, this petition is dismissed.

(Shivaji Pandey, J)

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